



UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, ) Case No. 08-1055  
)  
Plaintiff, ) ORDER OF PRETRIAL DETENTION  
) AFTER HEARING  
v. ) (18 U.S.C. § 3142(i))  
Alvaro Burciaga-Garcia )  
Defendant. )

I.

A.  Upon motion of the Government in a case that involves:

1.  a crime of violence or an offense listed in 18 U.S.C. § 2332b(g)(5)(B), for which a maximum term of imprisonment of ten (10) years or more is prescribed; or
2.  an offense for which the maximum sentence is life imprisonment or death; or
3.  an offense for which a maximum term of imprisonment of ten (10) years or more is prescribed in the Controlled Substances Act, Controlled Substances Import and Export Act or Maritime Drug Law Enforcement Act; or

1           4. ( ) any felony if defendant has been convicted of  
2           two or more offenses described in  
3           subparagraphs 1-3 above, or two or more state  
4           or local offenses that would have been  
5           offenses described in subparagraphs 1-3 above  
6           if a circumstance giving rise to federal  
7           jurisdiction had existed, or a combination of  
8           such offenses.

9           5. ( ) any felony that is not otherwise a crime of  
10          violence that involves a minor victim, or  
11          possession or use of a firearm or destructive  
12          device or any other dangerous weapon, or a  
13          failure to register under 18 U.S.C. § 2250.

14          B. Upon motion (✓) of by the Government ( ) of the Court sua  
15          sponte, in a case that involves:

- 16           1. (✓) a serious risk that defendant will flee;
- 17           2. ( ) a serious risk that defendant will
  - 18           a. ( ) obstruct or attempt to obstruct justice;
  - 19           or
  - 20           b. ( ) threaten, injure, or intimidate a
  - 21           prospective witness or juror or attempt
  - 22           to do so.

23          C. The Government ( ) is (✓) is not entitled to a rebuttable  
24          presumption that no condition or combination of conditions will  
25          reasonably assure defendant's appearance as required and the safety of  
26          any person or the community.

II.

- A. (✓) The Court finds by a preponderance of the evidence that no condition or combination of conditions will reasonably assure the appearance of defendant as required;
  - B. (✗) The Court finds by clear and convincing evidence that no condition or combination of conditions will reasonably assure the safety of any other person and the community.

III.

The Court has considered:

- A. (✓) the nature and circumstances of the offense(s) charged;
  - B. (✓) the weight of the evidence against defendant;
  - C. (✓) the history and characteristics of defendant;
  - D. (✓) the nature and seriousness of the danger to any person or the community that would be posed by defendant's release;
  - E. (✓) the Pretrial Services Report/Recommendation;
  - F. (✓) the evidence proffered/presented at the hearing;
  - G. (✓) the arguments of counsel.

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1 IV.  
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3 The Court concludes:  
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5 A.  Defendant poses a risk to the safety of other persons  
6 and the community based on: prior felony drug  
7 conviction and probation revocation  
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9 B.  Defendant poses a serious flight risk based on: \_\_\_\_\_  
10 undocumented status, failure to appear arrest,  
11 prior failure to obey court orders as evidenced  
12 by probation revocation  
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14 C.  A serious risk exists that defendant will:  
15 1.  obstruct or attempt to obstruct justice;  
16 2.  threaten, injure or intimidate a prospective  
17 witness or juror or attempt to do so;  
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19 based on: \_\_\_\_\_  
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25 D.  Defendant has not rebutted by sufficient evidence to  
26 the contrary the presumption provided in 18 U.S.C.  
27 § 3142(e) that no condition or combination of  
28 conditions will reasonably assure the safety of any  
other person and the community;

and/or

1                   ( ) Defendant has not rebutted by sufficient evidence to  
2                   the contrary the presumption provided in 18 U.S.C.  
3                   § 3142(e) that no condition or combination of  
4                   conditions will reasonably assure the appearance of  
5                   defendant as required.

6                   IT IS ORDERED that defendant be detained prior to trial.

7                   IT IS FURTHER ORDERED that defendant be committed to the custody  
8                   of the Attorney General for confinement to a corrections facility  
9                   separate, to the extent practicable, from persons awaiting or serving  
10                  sentences or persons held in custody pending appeal.

11                  IT IS FURTHER ORDERED that defendant be afforded reasonable  
12                  opportunity for private consultation with defendant's counsel.

13                  IT IS FURTHER ORDERED that, on Order of a Court of the United  
14                  states or on request of an attorney for the Government, the person in  
15                  charge of the corrections facility in which defendant is confined  
16                  deliver defendant to a United States Marshal for the purpose of an  
17                  appearance in connection with a court proceeding.

18                  DATED:         5/27/08

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21                  HONORABLE JACQUELINE SCHOOLJIAN  
22                  United States Magistrate Judge  
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